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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Assessment and Collection) MD Docket No. 95-3
of Regulatory Fees for)
Fiscal Year 1995)

To: The Commission

Comments of the
National Association of Broadcasters

The National Association of Broadcasters ("NAB")¹ submits these comments on the *Notice of Proposed Rulemaking* in this proceeding. We note that the Commission's calculation of the factors affecting the mandatory adjustments under section 9(b)(2) of the Communications Act reveals that mass media licensees were required to pay a proportionately larger share of regulatory fees in FY 1994 than would have been appropriate had those fees been based on the analysis of Commission staff undertaken in preparation for the *Notice*. Thus, in considering any changes to the proposed schedule of fees, the Commission should keep in mind that other classes of licensees were comparatively undercharged last year.² With that in mind, we turn to the Commission's proposals for FY 1995.

¹ NAB is a nonprofit incorporated association of radio and television broadcast stations and networks. NAB serves and represents the American broadcasting industry.

² This fact also suggests that the Commission should act favorably on many of the still pending requests for waiver of FY 1994 fees from broadcast stations, particularly from licensees of commercial television satellite stations.

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Commercial AM and FM Radio

Perhaps the most significant change in the Commission's fee proposal is its effort to respond to the complaints of many radio broadcasters that the FY 1994 radio fee schedule failed to take market size into account. The distinction the Commission proposes between stations in Arbitron ranked markets and stations outside of those markets is a useful first step towards a system where the amount of regulatory fees more closely reflects differentials in station revenue potential. The methods used to establish Arbitron rankings, however, may also create anomalies in the fees that result from the Commission's reliance on one set of station ratings as the basis for regulatory fee distinctions.

The Commission, therefore, should treat requests for waivers favorably where they demonstrate that the use of the market ranking list results in excessive fees for a particular station. These aberrations are the product of the way in which Arbitron radio rankings are derived, a process that differs significantly from the historical Arbitron television rankings with which the Commission is familiar.

Whether a radio market is ranked or not by Arbitron is not entirely dependent on its size. Even if a radio market is larger than some that are ranked, it may not be included in the Arbitron rankings if there are not enough radio stations in that market who wish to subscribe to the Arbitron ratings service. Since that is more likely to occur in smaller markets, there may be markets included in the lower range of Arbitron ranked markets that are smaller than unranked radio markets.

Further, unlike the television Areas of Dominant Influence that the Commission has relied on in its multiple ownership rules, *see* 47 C.F.R. § 73.3555(d)(3)(i), the inclusion or exclusion of a station from an Arbitron radio Metro Survey Area (MSA) is not entirely a matter of geography.

Instead, a station that is not physically within the counties included in an MSA may be included in the list of stations deemed to operate in the MSA if its listenership indicates that it competes with the stations located in the MSA.³ Indeed, whether a station is listed as being in the MSA may vary from ratings period to ratings period, and the counties which make up an MSA may also shift. These aspects of the Arbitron methodology result in at least two situations where the Commission should consider responding to waiver requests from stations that would be required to pay the regulatory fee associated with being in an Arbitron ranked market.

First, the Arbitron rankings reproduced in the 1994 *Broadcasting & Cable Yearbook* that the Commission proposes to use appear to be based on one series of Arbitron ratings books.⁴ It is possible that a station may have been counted within the MSA of a ranked market in that one ratings book, but not have been treated as being in that market in ratings books before or after. This could be the result of a particularly popular sporting event or other program being carried during that ratings period only, or merely be the result of an anomaly in the collection of ratings data. Whatever the cause, if a station can demonstrate that its inclusion within an MSA was an aberration, the Commission should grant a request that it pay only the regulatory fee for stations outside of an Arbitron ranked market.

Second, as discussed above, some very small markets are ranked only because one or more stations in the market subscribe to the Arbitron ratings service. Stations in these markets should be allowed to demonstrate that the economic potential of those markets is less than the

³ This can even result in one station being included in several Arbitron ranked markets.

⁴ Although not specified in the *Notice*, we assume that, if the Commission continues to use Arbitron market rankings as a factor in determining regulatory fees, it will update the market information it uses each year.

potential of unranked markets. In that case, the Commission should allow stations in those very small Arbitron markets to pay the fee that stations in unranked markets pay.

The Commission should also consider ways to inform stations of their fee status. Few stations subscribe to the *Broadcasting & Cable Yearbook*, the source of the market data the Commission proposes to use, or even to the Arbitron ratings service on which the market list is based. In order to avoid confusion, the Commission should either arrange itself to distribute a list of stations deemed to be in each market or, better, send each station a bill for the appropriate regulatory fee.

Commercial Television Satellite Stations

NAB supports the Commission's recognition that satellite television stations should be assessed a fee substantially less than the fees required of full service stations. Since these stations produce little or no independent programming and function almost entirely as translators for their parent stations, there is very little incremental cost to the Commission associated with their regulation. It is appropriate, therefore, that only a very small fee to cover those regulatory costs be imposed on their licensees. Further, since satellite stations are most commonly located in geographically large, generally rural, television markets, imposing a full fee on satellite stations results in unjustifiably large fees for the licensees of television stations in those markets.

In the *Notice* (§ 33), the Commission proposes to allow only those stations listed as satellites in the 1994 *Broadcasting & Cable Yearbook* to pay the reduced fee. Since it is possible that the compilers of this publication may have inadvertently overlooked one or more satellite stations, the Commission should not bar other stations from demonstrating that they in fact qualify as satellite stations, even if they are not so listed in the *Yearbook*. Such proof could be provided with the station's fee payment.

Collection Procedures

For FY 1994 fees, the Commission permitted licensees of multiple stations to make one fee payment for all of their stations on the date the last required payment was due. The *Notice* is silent as to whether the Commission intends to follow that practice for FY 1995 regulatory fees. NAB supports the Commission's continuing to follow this procedure, which allows stations to reduce the number of filings they must make with the Commission, as well as minimizing the processing burden on the Commission.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Henry L. Baumann", with a long horizontal flourish extending to the right.

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